

**DEPARTMENT OF STATE REVENUE**

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**LETTER OF FINDINGS NUMBER: 98-0121**

**Income Tax  
For The Period: 1996**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty, Interest, Collection Costs**

**Authority:** IC 6-8-1-10-2.1 (d), 45 IAC 15-11-2, IC 6-8.1-10-1, IC 6-8.1-8-3

The taxpayers protest the imposition of the penalty, interest, and collection costs.

**STATEMENT OF FACTS**

The taxpayer filed an IT-40 for calendar year 1996 on October 15, 1997 showing a balance due of \$19,972.02 which consisted of \$18,322.95 tax and \$1,649.07 penalty for underpayment of Estimated Tax for 1996. Interest was not calculated as required for late payments. On February 5, 1998 taxpayers paid to the Sheriff, tax and penalty shown on their return which left a balance due of \$3,114.88. The collection fee was retained by the Sheriff.

**II. Tax Administration – Penalty, interest, and collection costs**

**DISCUSSION**

At issue is whether the taxpayers were negligent in remitting tax due subjecting them to a penalty.

The taxpayers' counsel submitted an explanation on February 24, 1998 after the Sheriff collected a portion of the assessment. The explanation indicates that the taxpayers inserted the check with the tax return on October 15, 1997 and mailed it that evening.

On December 5, 1997 the Department mailed its AR-40 notice showing a balance due of \$21,012.66 followed by a Clerks Warrant on January 12, 1998 and a Sheriffs Warrant on January 23, 1998. On February 5, 1998, a sheriff's deputy arrived at the taxpayers' residence with a warrant. Taxpayers wrote a check for the original amount shown on their return leaving a balance due for collection costs, penalty and interest. The Sheriff retained its fee.

Taxpayers request that the Department recall the warrant, remove the interest assessment, penalties, collection fees, and provide written proof that the warrants were issued in error.

The department has reviewed the taxpayers' return and the envelope to assure that the check was not left in the envelope erroneously. No check was found. In addition the taxpayers were notified in December 1997 that a balance was due. Not until the Sheriff arrived, did the taxpayers' take notice. Taxpayers had ample time to pay the amount due or notify department that there was a problem.

**FINDING**

The taxpayer's protest is denied.